

APPLICANT:
Thomas P. Bachur

REQUEST: A variance to permit a shed
to be located in a recorded easement
in the R3 District

HEARING DATE: October 18, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5561

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Thomas P. Bachur

LOCATION: 1348 Crofton Drive – Birchwood Manor, Bel Air
Tax Map: 40 / Grid: 4F / Parcel: 75 / Lot: 25
Third (3rd) Election District

ZONING: R3 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-26C(6) of the Harford County Code,
to permit a shed to be located in a recorded easement in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

Thomas P. Bachur, the owner of that improved 0.161 acre parcel located at 1348 Crofton Drive, Bel Air, seeks permission to continue to locate a 10 foot by 10 foot utility shed within a 20 foot wide Drainage and Utility Easement which runs along the back line of his property.

Mr. Bachur testified that his entire backyard is only, approximately, 41 feet by 70 feet in size. He was not aware that an easement encumbered his property when he located the shed, although he did not first attempt to obtain a permit. The shed at present is located approximately upon the Applicant's rear yard property line, and very close to a fence which was erected by the property owner to the rear.

The 20 foot Drainage and Utility Easement, according to Mr. Bachur, takes up about one-half of his backyard. Furthermore, the back portion of his yard has a slightly elevated topography which also limits his ability to relocate the shed. Mr. Bachur states that only about half of his rear yard – which is very narrow and constrained to begin with – would be feasible for the relocation of a shed. However, to relocate a shed within the non-encumbered area would place it almost directly behind, and very close to, his house. Mr. Bachur feels this would unnecessarily take up the small amount of usable space he has available, and would also not be aesthetically pleasing to either himself or his neighbors.

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Mr. Bachur also suggests that a 10 foot easement is more typical, and that a 20 foot wide easement, given that his rear yard is only 41 feet deep, makes his property unique.

Gary Young then testified. Mr. Young is the adjoining property owner to the rear of the Applicant's property. Mr. Young is concerned that the shed is too close to his common property line with Mr. Bachur. Mr. Bachur's dog digs under the fence, and children sometimes go onto the top of the shed. Children also peer over the fence onto Mr. Young's property. He believes this is a dangerous situation and presents a safety hazard to the children. The shed is approximately one foot off the property line, according to Mr. Young. Mr. Young is concerned that the shed is simply too close to the property line.

Mr. Bachur then indicated that he would be willing to move the shed 3 feet off his rear property line. In fact, it will be necessary for Mr. Bachur to move the shed 3 feet forward as he did not request a variance to the 3 foot rear yard setback requirement.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune concurs with the Applicant's testimony that the shed cannot practically be located anywhere else within the Applicant's rear yard. The Applicant's rear yard is extremely shallow. To locate the shed outside of the 20 foot Drainage and Utility Easement will place the shed directly behind the house, and considerably closer to the house than to the rear yard lot line. This will be aesthetically unpleasing and is not consistent with other sheds in the area. Mr. McClune concurs that as a 3 foot rear yard setback has not been requested, the Applicant must move his shed forward 3 feet.

Mr. McClune notes that the Harford County Department of Public Works has commented in a letter dated March 10, 2006, that the continued location of the shed in the Drainage and Utility Easement does not adversely effect drainage in the area. Therefore, the Department of Public Works has no objection to permitting the shed to remain in the easement subject to the following conditions: 1) The shed cannot be placed on a permanent foundation, and 2) If it is found to contribute to any drainage problems in the future, the shed must be removed from the easement at the Owner's expense.

The Department of Planning and Zoning accordingly recommends approval of the requested variance.

No other testimony or evidence was presented in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

The Applicant is requesting a variance to Section 267-26C(6) of the Harford County Code which states:

“No accessory use or structure, except fences shall be located within any recorded easement area.”

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant's property, which is a relatively small lot of 0.161 acres, is further encumbered by a 20 foot Drainage and Utility in its rear yard. This easement effectively, without the granting of this variance, eliminates approximately half of the usable back yard area. In order to locate a shed or any similar improvement without the requested variance would necessitate the Applicant's placing those improvements virtually directly behind and close to the house. The improvements would accordingly be much closer to the house, almost against the rear of the house, than they would be to the rear yard lot line.

The Applicant suggests that his lot is also unique because the 20 foot Drainage and Utility Easement is larger than most easements, which the Applicant suggests would be closer to 10 feet wide. This suggestion is rejected. A 20 foot Drainage and Utility Easement is not an unusual easement for Harford County, and the subject property is no different from any other property within Harford County by being encumbered by such an easement.

However, it is found due to the small size of the Applicant's property and the shallowness of its back yard, together with the size of the Drainage and Utility Easement, the Applicant suffers a practical difficulty in not being able to locate a shed as proposed.

The relief requested, that the shed be allowed to continue to remain within the Drainage and Utility Easement, is the minimum relief necessary to eliminate the practical difficulty. Note is also made of the Department of Public Works finding of no adverse consequence from the shed continuing to remain in the easement provided the Applicant agree to remove shed at such time as it may be found to create a drainage problem.

The Applicant has also agreed to move the shed forward by 3 feet which would bring him into compliance with the 3 foot rear yard setback requirement of his district. This would also tend to address the concerns expressed by his neighbor to the rear.

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CONCLUSION:

Accordingly, it is recommended that the requested variance be granted subject to the following:

1. The shed be moved a distance of not less than 3 feet from the rear property line.
2. The Applicant shall obtain all necessary permits for his shed.
3. The shed shall not be placed on a permanent foundation.
4. That if it is found that the shed contributes to any drainage problem in the future, the shed must be removed from the easement at the Owner's expense, and immediately upon notification by the Harford County Department of Public Works.

Date: December 6, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JANUARY 5, 2007.